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No. 75-663

In the Supreme Court

of the United States

OCTOBER TERM, 1975

No. 75-663

ANITA LEE VAUGHN,

Petitioner,

v.

G. D. SEARLE & COMPANY,
a corporation,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

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THIS CONSTITUTIONAL ISSUE WAS TIMELY AND APPROPRIATELY RAISED

The constitutional issue was raised at the earliest possible time. It did not first arise until the Supreme Court of Oregon acted on June 26, 1975. Petitioner's petition for rehearing was filed July 14, 1975, well within the thirty-day period provided for such petitions.

Both the first and later a second petition for rehearing raised the identical constitutional issue which is presently before this Court, notwithstanding respondent's misstatement to the contrary.

Fortunately, both petitions were in writing, and prove the truth of our statement.

THERE ARE NO CONTROVERTED ISSUES OF FACT. THE ONLY ISSUE ON THIS APPEAL IS WHETHER IT IS IN KEEPING WITH DUE PROCESS AND THE SEVENTH AMENDMENT FOR AN APPELLATE COURT TO DISREGARD A JURY VERDICT

Respondent's brief is wide of the mark.

For purposes of this appeal there are no controverted issues of fact.

The only live issue in this case is whether a civil jury case which was appropriately submitted to a jury on five separate and distinct grounds, any one of which would independently sustain a verdict for plaintiff, can be disregarded by an appellate court merely because it does not agree with the way the jury decided one of the five issues.

The Supreme Court of Oregon did not discuss the other four grounds. It ignored them.

Respondent's quotations from portions of the opinion of the Oregon Supreme Court are wrenched out of context. They also do not make clear that when the Oregon court concluded that the "physicians" had not been sufficiently apprised of plaintiff's symptoms, the court was speaking of the two *treating* doctors. Nothing more.

Not discussed or even mentioned by the Oregon court is the fact that if the two prescribing doctors, or plaintiff herself, had been adequately warned, plain-

tiff would not have been exposed to the latent hazards of the product in the first instance.

Not only did the court below choose to ignore separate and discrete issues decided below by the triers of fact. It also chose to block their retrial by entering a directed verdict.

Respectfully submitted,

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